STATE OF MICHIGAN

COURT OF APPEALS

JULIE BYARSKI,

Plaintiff-Appellant,

v

HURON COUNTY SHERIFF, HURON COUNTY BOARD OF COMMISSIONERS, and TYLER RAMSEY,

Defendants-Appellees.

UNPUBLISHED
December 7, 1999

No. 212431
Huron Circuit Court
LC No. 97-000154 CZ

Before: White, P.J., and Hood and Jansen, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

This is a gender discrimination case in which plaintiff, a corrections officer, filed suit pursuant to the Civil Rights Act, MCL 37.2101 *et seq*.; MSA 3.548(101) *et seq*. Plaintiff was granted full-time employment status on May 1, 1996, and was subject to one year of probation under a collective bargaining agreement. Plaintiff was ultimately terminated effective April 29, 1997, for failing to successfully complete her probationary period.[1] Plaintiff contends, however, that she was terminated improperly on the basis of her sex because: (1) she was not reimbursed for expenses when male employees were; (2) she was treated differently after she asked to attend road patrol school; (3) she was not advised of alleged errors in her time clocks and time logs and was disciplined when other male employees were not; (4) she was the only employee to be disciplined for an alleged claim of rudeness to a civilian; (5) she was disciplined for releasing an inmate one day early, but another male employee was not disciplined for releasing an inmate fifteen hours early; and (6) no other employee had his or her probationary period extended for six months and a male employee had his probation extended for only three months without a requirement that he waive any rights.

The trial court granted defendants' motion for summary disposition, ruling that plaintiff failed to establish that defendants treated her differently than similarly situated male corrections officers. Plaintiff argues that the trial court erred in so concluding. This Court reviews de novo a trial court's decision on

a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

To establish a prima facie case of sex discrimination under the disparate treatment theory, an employee must show that she was (1) a member of a protected class; (2) subject to an adverse employment action; (3) qualified for the position; and (4) others, similarly situated and outside the protected class, were unaffected by the employer's adverse conduct. *Town v Michigan Bell Telephone Co*, 455 Mich 688, 695; 568 NW2d 64 (1997). We agree with the trial court that plaintiff failed to create a material factual dispute that other, similarly situated employees outside the protected class were unaffected by the employer's adverse conduct.

The "similarly situated" requirement of a prima facie disparate treatment case of discrimination does not require that the plaintiff be identical in every single aspect of employment to the other employees the plaintiff alleges have been more favorably treated. Rather, the plaintiff must simply prove that "all of the relevant aspects" of her employment situation were "nearly identical" to those of a differently treated person. *Id*. at 699-700; *Wilcoxon v Minnesota Mining & Mfg Co*, 235 Mich App 347, 369; 597 NW2d 250 (1999) (noting that the "question whether others are similarly situated depends on how they are characterized.")

Plaintiff alleges six instances where she was treated differently. First, plaintiff claims she was treated differently when she was not reimbursed for meal expenses while attending the Department of Corrections Academy in Lansing, when a male employee was reimbursed. Plaintiff, then a part-time employee, was permitted to attend the four-week academy where lodging and meals were provided. Plaintiff chose to stay in a hotel room and purchase her own meals. Plaintiff knew she would not be reimbursed for hotel expenses but testified that she was told she would be reimbursed for meals. According to plaintiff, she submitted the first week's expenses and was reimbursed, but in the second week, she was told she would not be reimbursed for meals because she was a part-time employee.

Plaintiff alleges that a male officer was reimbursed for meals, and that the only reason she was not was because she was a female. However, the male officer's circumstances were different. He attended a different academy, which required commuting between locations and did not provide lunch, and although at the time he entered the academy he was a part-time employee, he was switched to full-time status ten days into the program. Under these circumstances, plaintiff did not establish that the male officer was similarly situated. The evidence does not support plaintiff's claim of gender discrimination.

Second, plaintiff argues that she was treated differently after she requested to attend road patrol school. The evidence reveals that plaintiff asked defendants if she could attend road patrol school, and that defendants indicated that another male corrections officer would complete his probationary period before plaintiff, and that he would be next in line to attend road patrol school. Plaintiff contends that defendants have not employed a female road patrol officer in ten years, and that defendants' extension of her probation period for six months removed her from consideration for the next road patrol school. Plaintiff failed to show she was disparately treated where the male corrections officer had seniority over plaintiff and was thus not similarly situated.

Third, plaintiff argues that she was treated differently after an investigation of time clocks and time logs, because her discrepancies were used as a basis for extending her probationary period, while other male officers were not disciplined until after plaintiff was terminated. There was testimony that two full-time corrections officers were reprimanded for time clock discrepancies and documentary evidence that written reprimands were placed in their files. However, this evidence does not satisfy the element that plaintiff was treated differently than similarly situated male corrections officers because as a probationary corrections officer, plaintiff was not similarly situated to these nonprobationary corrections officers. *Town, supra; Wilcoxon, supra*. Furthermore, the evidence indicates that the officers were disciplined for their failure to make regular jail checks because both received written reprimands in their personnel files. The fact that they received written reprimands as opposed to extended probation, like plaintiff, can be logically attributed to the fact that the male officers were not on probation.

Fourth, plaintiff argues that she was treated differently because she was the only corrections officer who had been disciplined for an alleged act of rudeness. However, because plaintiff failed to provide any evidence that complaints had been lodged against any male corrections officers and had gone unpunished, this evidence does not advance plaintiff's claim of disparate treatment. *Merillat v Michigan State University*, 207 Mich App 240, 248; 523 NW2d 802 (1994).

Fifth, plaintiff argues that she was treated differently because she was disciplined by extending her probationary period when she released an inmate early, where previously a male corrections officer released an inmate early and was not punished. However, it is not clear from the record whether the officer was a probationary employee, like plaintiff, at the time this incident occurred. Furthermore, the jail administrator who ordered the release was not similarly situated to plaintiff, a probationary corrections officer. *Town, supra* at 700; *Mitchell, supra* at 583.

Sixth, plaintiff argues that she was treated differently because she was the only corrections officer to have had her probationary period extended. Plaintiff points out that a probationary road patrol officer had his probationary period extended for three months, and alleges that he was not asked to sign a letter of understanding giving up his rights. Again, plaintiff did not provide any evidence that other male probationary corrections officers, who committed the same mistakes as plaintiff, were allowed to complete their probationary periods. The fact that a road patrol probationary deputy sheriff was subject to an extended probationary period is not probative of this issue without some evidence or argument that he was similarly situated to plaintiff.

Plaintiff also points to the fact that she informed defendants that she was pregnant on April 22, 1997, and that days later, on April 28, 1997, she was informed that her work was unsatisfactory. Plaintiff does not discuss how this is evidence of discrimination, and since plaintiff only gave the issue cursory treatment, we conclude that it is not necessary to address it. *Meagher v Wayne State University*, 222 Mich App 700, 716; 565 NW2d 401 (1997).

Finally, plaintiff argues that the trial court relied on facts not in the record and made findings of fact in deciding the motion for summary disposition. A trial court may not make findings of fact in deciding a motion for summary disposition and must review the record evidence and all reasonable inferences from that evidence. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994).

However, in this case, no improper factfinding occurred. The trial court merely expanded on the reason why it did not believe that the insertion of the release provision in the letter of understanding was evidence of discrimination on defendants' part. There is no evidence on the record that the trial court's opinions interfered with its decisionmaking. Furthermore, the trial court had previously concluded that plaintiff had failed to show that she had been treated differently than male corrections officers. There is no indication that the trial court failed to view the evidence in the light most favorable to plaintiff, the nonmoving party. *Jackson v Saginaw Co*, 458 Mich 141, 142-143; 580 NW2d 870 (1998). Therefore, no error occurred.

Accordingly, plaintiff failed to establish a prima facie case of gender discrimination. *Schellenberg v Rochester, Michigan, Lodge No 2225*, 228 Mich App 20, 33; 577 NW2d 163 (1998). In the absence of a genuine issue of material fact that plaintiff was treated differently than similarly situated male corrections officers, the trial court did not err in granting summary disposition for defendants.

Affirmed.

/s/ Helene N. White
/s/ Harold Hood
/s/ Kathleen Jansen

[1] On April 28, 1997, plaintiff was given a "letter of understanding" indicating that she failed to satisfactorily complete her probationary period. The letter also provided that plaintiff could continue on an additional six-month period of probation, beginning May 1, 1997. Plaintiff refused to sign the letter and was therefore considered to be a "voluntary quit."